IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND SEVEN

PRESENT

HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

AND

HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.7853 of 2002

Between:
Jonna Krishnappa

..... PETITIONER

AND
The Senior Civil Judge, Madanapalle,
Chittoor District and 2 others

.....RESPONDENTS

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HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI
AND
HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.7853 of 2002

ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

The petitioner who was working as an Amin, had instituted this writ petition, aggrieved by an order passed by the learned District Judge, Chottore on 24.06.1998, imposing the punishment of stoppage of four increments with cumulative effect.

2. The facts to the extent relevant would disclose that the writ petitioner was working as Amin at the Subordinate Judge's Court, Madanapalle at the relevant point of time. Certain complaints have been lodged by the Advocates and their Clerks alleging that the Amins of the Court, in particular one Sri A.Venkatamuni had been indulging in the malpractice of selling away the postal covers and postal stamps deposited in various matters, after pilfering them from the Court records. The learned Subordinate Judge, Madanapalle had been directed by the learned District Judge on 30.08.1995 to conduct a discreet enquiry to find out about the veracity of these allegations. Thus, the ball was set rolling in the matter.

3. The learned Subordinate Judge had returned his *prima facie* findings, in substance, to the following effect:

> "For the present purpose it is suffice to have the view of B-Registers of each Court which are maintained every year and Dispatch Register, which is a common Register for all courts. The Dispatch Amin's duty is to receive the postal covers which are to be sent to the Defendants or Respondents, as the case may be, in respective suits or O.Ps. and other proceedings. When he receives the postal covers, he sends them under

registered post and after collecting the postal receipts thereof he will be pinning them separately and on occasions filing them in the Dispatch Register itself. He makes relevant entries in the Dispatch Register such as B-Number, O.S.Number, name of the Respondent or Defendant, date of receipt by him and enters these particulars against the dispatch number. The Nazir's Assistant in turn has to enter the dispatch number under the relevant column in B-Registers against the respective B-Numbers. From verification of B-Registers and dispatch registers, it would be very easy to make out as to which of the covers were actually handed over to the dispatch Amin, by the Nazir Assistant on those relevant days. Even if wrong dispatch numbers are noted against B-numbers in B-Registers by the Nazir's Assistant, the same can also be detected by cross checking the suit or O.P.Number with reference to B-Number mentioned in B-Registers with that of the corresponding particulars in the dispatch register."

"Since I did not disclose anything to the Sheristadar about this petition, I had to ask him to trace out at what stage those covers were missing i.e. whether they were retained by the concerned Assistant of Deputy Nazir or whether though they were handed over to the Dispatch Amin, whether the dispatch Amin has retained them without dispatching them. Therefore, the Sheristadar had to take out the periods of each Amin who has worked as Assistant to Deputy Nazir of the dispatch Amin during those periods. He has verified the same and put up before me a written report with all particulars and having perused the same and personally verifying the registers with the particulars he has given, I am satisfied with the correctness of those particulars which lead to the detection of missing of postal covers."

"According to his report the postal covers were missing when the Amin, Sri A.Venkatamuni and the Amin Sri J.Krishnappa functioned as Nazir Assistants. During the periods of Sri A.Venkatamuni, the instances are many, whereas during the period of Sri J.Krishnappa, the instances are of course very less."

4. In view of this preliminary report, disciplinary action has been initiated against both the Amins Sri A.Venkatamuni and the petitioner herein. To the extent relevant, charge No.2 framed against the petitioner reads as under:

"that you Sri J.Krishnappa, Amin, Sub Court, Madanapalli while working as Deputy Nazir's Assistant during the months of

March and September, 1991, February, May, June, 1994, and during that period you indulged in malpractice of stealing of the stamped covers after preparation of summons and notices by the Process-writers of ADJ Court, Sub Court, District Munsif Court, Madanapalli and you retained without handing over them to the Dispatch assistant of Nazarath willfully to make wrongful gain by selling them to the intending purchasers and thus committed misconduct contravening the provision of Rule 3 of A.P.Civil Services (Conduct) Rules, 1964."

5. Since the petitioner and the other Amin have disputed the veracity, a regular enquiry has been ordered and before the Enquiry Officer, as many as 13 witnesses have been examined and 17 exhibits have been got marked in support of the charge. The writ petitioner had not preferred to examine any witnesses nor did he file any documents during the course of enquiry. The Enquiry Officer has concluded the enquiry holding the petitioner guilty of charge No.2 in the following manner:

"D2 was the nazar assistant during the above periods as per the records and as per the evidence available. Though B-numbers were given for receiving the summons with postal covers by the parties and entered in the B-registers there was no corresponding dispatch numbers of the postal covers sent to the respective parties. In B.Nos.359, 360, in OS.69/91; B.No.1068 in SC.54/91; B.No.1122 in OS.254/89; B.No.640 in OS.141/94; B.No.664 in OS.148/94 on the file of P.D.M.Court, the postal covers were not sent as per the registers. In the above suits it was proved by both oral and documentary evidence that at least one postal cover was not sent in each of the above cases by D.2 in the respective dates. In the dispatch register, the columns were kept blank. Though this delinquent suggested that this enquiry has been got appointed at the instance of Sheristadar PW 3 in view of the disputes between him and PW 3, there is no material to show that there was any enemity between Sheristadar PW 3 and D.2 and the enquiry was got ordered on the report of Sheristadar. There is no evidence to show that PW 3 has got enemity or enimosity with D.2, and at his instance the enquiry was ordered. After going through the material on record, after considering the written statement and the written arguments filed by D.2, I am of the considered opinion that D2 during the relevant period mentioned in the charge worked as nazir assistant and indulged in malpractice in handling the postal

covers appended to the summons and he has not handed over them to the dispatch amin in the above suits, though he received postal covers and entered in B-registers. Since he being the nazir assistant during the relevant period mentioned in the charge and he maintained the records, he is liable for not handing over the postal covers to dispatch amins and for the dispatch register blanks in the relevant columns. Since there is no reasonable explanation by the delinquent the only inference that can be drawn is that the delinquent No.2 with ulterior motive for wrongful gain retained the postal covers without handing over them to the dispatch amin and contravened the provisions of Rule 3 of Civil Services (Conduct) Rules, 1964."

6. Since the explanation offered by the petitioner after the receipt of the above report, is not found satisfactory, the District Judge through the impugned order, imposed the punishment of withholding four annual increments with cumulative effect on both the Amins. The petitioner preferred an appeal on the Administrative side of this Court on 13.11.1997. That appeal was considered and rejected by this Court by an order dated 27.03.1999. Thereafter, the petitioner moved another petition on 23.06.1999, soliciting re-consideration of the entire matter and that application was also rejected by this Court on 20.10.1999.

7. Heard the learned counsel on either side.

8. The principal contention of the learned counsel for the petitioner is that the main element of the charge leveled against the petitioner is that he indulged in the malpractice of stealing of the stamped postal covers from the Court records, whereas the said charge has not been brought home and hence he deserves to be let off. The learned counsel would also urge that even assuming, for purposes of argument that there was sufficient material on record for an inference to be drawn against the petitioner, but nonetheless the punishment imposed in so far as the petitioner is concerned, is too grave and disproportionate to the extent of the charge held proved against him. The learned counsel would also urge that he had discovered new material which disclosed that the postal covers have not, in fact, been deposited by the Advocates in the

matters concerned and hence, he could not have been penalized for causing disappearance of a non-existing material.

9. Per contra, the learned counsel for the respondents Sri D.V.Seetharamamurthy would contend that the material that was marshaled before the Enquiry Officer, both oral and documentary evidence would unmistakably disclose the culpability of the writ petitioner along with another Amin and therefore, it is not open to this Court to

re-appreciate the entire evidence for arriving at a conclusion different from that of the Enquiry Officer and the Disciplinary Authority with regard to the guilt of the petitioner. He would also further contend that when once it has been brought out that the petitioner is equally guilty for the misdemeanor of causing pilferage of the record of the Court, the fact that he has indulged in such an act on less number of occasions than the other Amin, does not make the punishment imposed in so far as the petitioner is concerned any heavier. In fact, the learned District Judge had dealt with both of them with an even Land and hence the impugned order could not be faulted on that count. In so far as the new material, the petitioner is now seeking to rely upon, the learned counsel for the respondents would urge that in spite of providing more than a reasonable opportunity, the same has not been produced during the course of enquiry, and if any consideration is shown to the same to day, it would be a denial of a fair chance for the respondents to put forth their views with regard to the accuracy and relevance of the same, and hence, he urges that the same should not be taken into consideration. He also urges that in view of the enormous time consumed by the writ petitioner in instituting this writ petition, even after the review petition moved by him is dismissed by this Court on administrative side, on 20.10.1999, for that reasons also, the fresh material which is sought to be relied upon by the petitioner should not be taken into account or consideration by this Court.

10. We agree with the point of view canvassed by the learned counsel for the respondents, in that, consideration of the new and fresh material by way of evidence by the petitioner at this stage would result in denying them a fair opportunity to meet the case of the petitioner. There are no valid reasons assigned as to why the petitioner could not obtain "the certified copies of the battas paid in the respective matters" earlier and produce the same before the Enquiry Officer. Without providing any opportunity for testing the veracity and genuineness of such claims, it is hazardous to take into account and consideration such additional and new material at this belated stage and particularly after several years have rolled by before the petitioner would institute the present writ petition.

11. It is not in dispute that the disciplinary authority had agreed with the finding on Charge No.3 and held the petitioner as not guilty of the same. Entire issue, therefore, centers around the guilt of the petitioner with reference to charge No.2, as he is not concerned with charge No.1, which in turn, is directed against the other Amin Sri A.Venkatamuni.

12. For bringing home the guilt of the petitioner, amongst several others, the Sheristadar of the Court has been examined at the departmental enquiry as PW 3. He has deposed with reference to the role of the petitioner herein in the following manner:

> "Sri J.Krishnappa, worked as Nazar Assistant for the months of May & June 1994, January & February, 1994; He also worked as a Nazar Assistant during the months of March & September, 1991; Ex.P-15 is the 'B' Register from 8-11-89 to 8-4-91, in Ex.P-15 B.No.164 in OP.38/91 one postal cover made ready on 15-3-91 and dispatch column is left blank, which means it was not sent. There is erasement and again written as 'post' in col.No.4, i.e. Ex.P-16 (page No.452) 'B' register of P.D.M.Court for the period from 15-10-90 to 9-10-91 is marked as Ex.P-17. In B.No.292 out of 3 postal covers only 2 covers were sent and in the other cover the dispatch number is left blank. B.No.359 in Ex.P-17 in OS.60/91 the column of Dis.No. is left blank. B.No.360 the column of dis.No.one postal cover is left blank.

B.No.1068 in SC.54/91 the postal cover made ready on 6-9-91 and the column of dispatch No. is left blank. B.No.1172 the cover made ready on 27-9-91 the column of dispatch No. is left blank. In Ex.P-3 in B.No.640 the postal cover for D-1 & D-2 were made ready on 5-5-94, though J.Krishnappa was Nazar Assistant during that period, the hand-writing of J.Krishnappa does not tally. B.No.664 in Ex.P-3 in OS.148/94 was made ready on 29-6-94, the column of dispatch number was left blank. I made cross-check in reference to the dispatch register and I found that the above covers were not sent.

For the missing entries in B-register relating to the 3 Courts were verified by the presiding officer, i.e. Sub-Judge, Madanapalle and put red-lines by him in all the entries where the columns are kept blank."

13. PW 3 has been subjected to extensive cross examination. In cross examination, he has reiterated as under:

"I am deposing as per entries of B-registers and there is no account for dispatch of postal cover in B.No.640. I have not verified the batta memos, but I scrutinized the B-registers and dispatch registers concerned."

14. It is settled principle of law that in exercise of jurisdiction under Article 226, the High Court cannot re-appreciate the entire evidence, as would a Court of Appeal, normally do. Adequacy and sufficiency of evidence for returning a finding of guilty is also not an issue, which can be entertained by this Court in its jurisdiction under Article 226, unless one is able to demonstrate that the material, as is available on the face of the record, would not normally lead a reasonable body of men to arrive at the conclusion of guilt, and thus rendering the finding of guilty recorded by the Enquiry Officer/Disciplinary Authority to be characterized as a perverse finding, warranting interference.

15. But nonetheless the main thrust of the charge appears to be that the petitioner had indulged in "malpractice of stealing of the stamped covers" from the Court records. As is already noticed, an inference has been drawn that the petitioner is equally guilty of causing disappearance of the postal covers from the Court records and thus,

indirectly, the charge is sought to be held established against the petitioner. In matters of this nature, the possibility or availability of direct evidence can be very remote if not liable to be ruled out. When once the petitioner had failed to satisfactorily explain the absence of postal covers from the Court records under his custody, it is reasonable inference that may be drawn that he has indulged in the malpractice of removing them from the Court Records. Though the charge as framed against the petitioner used a far more stringent expression "malpractice of stealing", but nonetheless the main theme with which the petitioner had been proceeded and confronted against is that he has caused the disappearance of certain material forming part of the Court records. The petitioner had not suffered, in this process, any prejudice by the usage of a stronger expression characterizing his misconduct.

16. But nonetheless one fact which remains to be taken note of is that the allegations have been principally made against the other Amin Sri A.Venkatamuni and in the process of investigating those allegations, the role of the present petitioner herein has also come out. It is very clear that the postal covers have not been properly accounted for in few cases in so far as the present petitioner is concerned, whereas there were large scale irregularities indulged in by Amin Sri A.Venkatamuni. In those set up circumstances, a lenient view should have been taken while imposing the punishment in so far as the present petitioner is concerned. The petitioner as well as Sri A.Venkatamuni could not have been treated alike without any regard for the quantum of irregularities indulged in by them.

17. Proportionality of punishment, as an area open for judicial review, has been brought into the Indian Jurisprudence by the Supreme Court in the cases of ***Ranjit Thakur v. Union of India***[1]***, Bhagat Ram v. State of H.P***[2]***,*** and ***U.P.SRTC v. Mahesh Kumar Mishra***[3]. The Supreme Court has also cautioned that normally what should be the adequate punishment that would meet the offender should be left for

consideration of the disciplinary authority. But, however, with a view to cut down further rounds of avoidable litigation and the possible delay, Courts have also been substituting the punishment by themselves in appropriate cases.

18. In fact, the learned counsel for the petitioner had drawn our attention to an unreported judgment, rendered by a Division Bench of this Court, comprising of the Honourable Chief Justice S.Saghir Ahmed and Honourable Justice Sri P.Venkatarama Reddi (as Their Lordships then were) in Writ Appeal No.1195 of 1994 in this regard, wherein their Lordships concluded as under:

> "Having regard to the facts and circumstances of the case, We feel that the contention of the learned counsel for the appellant merits acceptance.
>
> Accordingly, We allow the writ appeal partly and direct modification of the punishment into one of withholding two increments without cumulative effect."

19. Stopping of increments with cumulative effect will have a grave impact on an employee travelling even beyond his term of service, and his post retiremental benefits will also get adversely effected by the cumulative effect imposed on such an employee. We, therefore, consider that stoppage of four increments without cumulative effect would meet the ends of justice in the case of the petitioner in contrast to the case of the other Amin Sri A.Venkatamuni.

20. While upholding the finding of the misconduct against the petitioner, We think it appropriate that the petitioner be imposed punishment of withholding of stoppage of four increments without cumulative effect, in substitution of the punishment of stoppage of four increments with cumulative effect.

21. Accordingly, the Writ Petition is allowed, modifying the punishment as stoppage of four increments without cumulative effect, in substitution of the punishment of stoppage of four increments with

cumulative effect. In the circumstances, there shall be no order as to costs.

BILAL NAZKI, ACJ

NOOTY RAMAMOHANA RAO, J

Dated: 31.12.2007
Dsr

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[1] (1987) 4 SCC 611
[2] (1983) 2 SCC 442
[3] (2000) 3 SCC 450